

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105**

File No. RH06091489

Date: April 14, 2006

**Proposed Amendment of Section 2632.5
Automobile Insurance Rating Factors: Mileage Verification**

INITIAL STATEMENT OF REASONS

INTRODUCTION

Pursuant to Insurance Code section 1861.02, subdivision (e), Insurance Commissioner John Garamendi (“Commissioner”) proposes to amend California Code of Regulations, Title 10, Chapter 5, Subchapter 4.7, Article 3, section 2632.5(c)(2) to add subsections (A) and (B) to clarify the types of information an insurer is allowed or required to collect to determine estimated annual mileage.

California Insurance Code Section 1861.02(a), added by Proposition 103, provides in relevant part:

Rates and premiums for an automobile insurance policy . . . shall be determined by application of the following factors in decreasing order of importance:

- (1) The insured’s driving safety record.
- (2) *The number of miles he or she drives annually.*
- (3) The number of years of driving experience the insured has had.
- (4) Those other factors that the commissioner may adopt by regulation and that have a substantial relationship to the risk of loss.

(emphasis added.) In relevant part, Title 10, California Code of Regulations, Section 2632.5(c)(2) provides that the number of miles driven annually means:

the estimated annual mileage for the insured vehicle during the 12 month period following inception of the policy.

Currently, there are no regulations that specifically indicate the information an insurer is allowed or required to collect to determine the number of miles driven annually, i.e., the second mandatory factor.

SPECIFIC PURPOSE AND REASONABLE NECESSITY OF AMENDMENT

The Commissioner has determined that the proposed amendment is reasonably necessary to carry out the requirements articulated in Insurance Code section 1861.02(a). The specific purpose of and rationale for subsections (A) and (B) are set forth below. Implementation of this amendment to the regulations is necessary to clarify the types of information an insurer is allowed or required to collect to determine the estimated annual mileage pursuant to Insurance Code Section 1861.02(a).

Proposed subsections (A) and (B) are intended to implement Insurance Code Section 1861.02(a) and provide further specificity for Title 10 California Code of Regulations, Section 2632.5(c)(2) by ensuring uniformity of information an insurer is allowed or required to collect to determine estimated annual mileage.

In particular, proposed subsections (A) and (B) provide that at the inception of the policy and upon policy renewal, an insurer:

- 1) Shall require the estimated annual mileage and “reasonable information” (as defined) necessary to support the estimate. Except as otherwise set forth in this section, an insurer shall use the applicant’s/policyholder’s estimated annual mileage.
- 2) May require odometer readings from an applicant/policyholder or from the California Department of Motor Vehicles smog certificate program.
- 3) May require an agent to verify odometer readings in specified circumstances.
- 4) May use a default annual mileage figure which has been filed with and approved by the Commissioner if (1) and (2) are not provided, and the insurer has clearly indicated the consequences of not providing the requested information. Upon receipt of the mileage/odometer information, the policy shall be rated using that information.
- 5) Shall file and receive approval from the Commissioner for all mileage rating rules.
- 6) Shall not change the mileage estimate without notifying the applicant/policyholder.
- 7) May request but shall not require prior documentation, such as prior vehicle maintenance records or prior smog certificates, in order to confirm mileage driven.
- 8) Shall not require information from a prior insurer to confirm mileage driven.

IDENTIFICATION OF STUDIES

The Department has not relied upon any studies in connection with this rulemaking proceeding.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of this amendment would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Commissioner has determined that no reasonable alternative exists to carry out the purpose for which this amendment is proposed. The proposed amendment does not mandate the use of specific technologies or equipment or prescribe specific actions or procedures and, therefore, performance standards were not considered as an alternative.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The Commissioner has made an initial determination that adoption of the proposed amendment will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed amendment simply clarifies and makes specific the types of information an insurer is allowed or required to collect to determine the second mandatory factor contained in Insurance Code Section 1861.02(a), the number of miles driven annually.

Because automobile insurance is generally written based upon the state in which the vehicle is garaged, this amendment does not affect the ability of California insurers to compete with insurers in other states. Moreover, insurers' class plans are revenue neutral, simply reflecting the premium distribution, not the overall premium collected. Accordingly, the proposed amendment will not have a significant adverse economic impact on businesses.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The proposed amendment only affects insurance companies. Such companies are not small businesses, within the meaning of Government Code section 11342.610. (Gov. Code Section 11342.610, subd. (b), para. (2).) The proposed amendment, therefore, does not impact small businesses.